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 10 FINJAN, INC.

11 **IN THE UNITED STATES DISTRICT COURT**
 12 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**
 13 **SAN FRANCISCO DIVISION**
 14

15 FINJAN, INC., a Delaware Corporation,

16 Plaintiff,

17 v.

18 JUNIPER NETWORKS, INC., a Delaware
 19 Corporation,

20 Defendant.
 21
 22

Case No.: 3:17-cv-05659-WHA

**PLAINTIFF FINJAN, INC.'S NOTICE OF
 MOTION AND MOTION FOR RELIEF
 FROM JUDGMENT PURSUANT TO FED. R.
 CIV. P. 60(B); MEMORANDUM OF POINTS
 AND AUTHORITIES**

Date: May 9, 2019
 Time: 8:00 a.m.
 Courtroom: 12, 19th Floor
 Before: Hon. William H. Alsup

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 25 **REDACTED VERSION OF DOCUMENTS FILED UNDER SEAL**
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Coastal Transfer Co. v. Toyota Motor Sales, U.S.A., Inc.,
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Immersion Corp. v. Sony Computer Entm’t Am., Inc.,
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Jones v. Aero/Chem Corp.,
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Robinson v. Delgado,
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Robinson v. Lamarque, 581 F. App’x 695 (9th Cir. 2014) 10

Webster v. U.S.,
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Yesh Music v. Lakewood Church,
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Other Authorities

12 James Wm. Moore et al., *Moore’s Federal Practice* § 60.02[2] (3d ed.2004) 10

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1 **NOTICE OF MOTION AND MOTION**

2 TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

3 NOTICE IS HEREBY GIVEN that on May 9, 2019, at 8:00 a.m., or as soon thereafter as
4 counsel may be heard by the Honorable William Alsup in Courtroom 12, 19th Floor, located at 450
5 Golden Gate Avenue, San Francisco, California 94102, Plaintiff Finjan, Inc. (“Finjan”) will and hereby
6 does move the Court for an order granting its motion for relief from judgment pursuant to Federal Rule
7 of Procedure 60(b). This Motion is based on this Notice of Motion, the Memorandum of Points and
8 Authorities, the trial record, the pleadings and papers on file, and any evidence and argument presented
9 to the Court.

10 **RELIEF REQUESTED**

11 Pursuant to Federal Rule of Civil Procedure 60(b)(2)-(3), Finjan moves for relief from the jury
12 verdict entered in this action on December 14, 2018 and this Court’s subsequent denial of Finjan’s
13 Motion for Judgment as a Matter of Law on March 11, 2019 (Dkt. Nos. 333, 387, respectively), due to
14 Juniper’s concealment of key evidence that proved that Sky ATP had a “database” as recited in Claim
15 10 of U.S. Patent No. 8,677,494 (“the ‘494 Patent”), which was the pivotal issue at the December 2018
16 trial. Juniper had no reasonable grounds to delay production of such information. Given this newly
17 discovered evidence and Juniper’s discovery misconduct, a new trial should be ordered.

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Finjan is entitled to relief from the jury verdict found on December 14, 2018 (Dkt. No. 333,
4 “Verdict”) and this Court’s subsequent order denying Finjan’s Motion for Judgment as a Matter of
5 Law on March 11, 2019 (Dkt. No. 387, “Order”) because Juniper concealed key evidence during
6 discovery that proved that Sky ATP had a “database” as recited in Claim 10 of U.S. Patent No.
7 8,677,494 (“the ‘494 Patent”), which was the pivotal issue to be determined at the December 2018 trial
8 (“the December trial”). Juniper’s concealment prevented both the Court and the jury from evaluating
9 this key evidence of how and where Sky ATP satisfies the “database” element of Claim 10.

10 Specifically, Juniper withheld key, highly relevant and directly responsive technical documents
11 regarding Joe Sandbox [REDACTED] that
12 demonstrated that Joe Sandbox in Sky ATP uses a “database” to store the results of its analysis, as
13 recited in Claim 10 of the ‘494 Patent. These documents directly refuted Juniper’s only non-
14 infringement defense at the December trial and yet, Juniper has no explanation for why it produced
15 these Joe Sandbox documents nearly two months *after* the December 2018 trial, knowing that such
16 documents were critically important to the infringement case presented in the December 2018 trial.

17 Particularly troubling is the fact that Juniper has no excuse for its belated production, as Finjan
18 sought this information over a year ago in discovery. In response to written discovery requests,
19 Juniper explicitly represented in 2018 that it had completed its production of any documents relevant
20 to Sky ATP, which is demonstrably false based on Juniper’s February 2019 production. Moreover,
21 Juniper’s Sky ATP engineers testified at deposition that [REDACTED]
22 [REDACTED].

23 Juniper’s inexcusable belated production of these key documents is precisely the type of newly
24 discovered evidence contemplated by Rule 60, which warrants relief from judgment and an order for a
25 new trial. Without this evidence, Finjan was severely prejudiced at trial, as this key evidence
26 undermined Juniper’s sole non-infringement defense. Such conduct should not be tolerated.

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